IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 8855 of 2006(D)

PETITIONER:

DR.M.S.JISHA,
MALAYIL PUTHEN VEEDU,
101 KAVALA, ATHIRAMPUZHA.P.O,
KOTTAYAM.

BY ADV. SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.NAVEEN.T
SRI.T.G.SUNIL (PRANAVAM)
SMT.POOJA SURENDRAN
SRI.C.X.ANTONY BENEDICT

RESPONDENTS:

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1. MAHATMA GANDHI UNIVERSITY,
P.D.HILLS.P.O, KOTTAYAM,
REPRESENTED BY ITS REGISTRAR.

2. THE VICE CHANCELLOR,
MAHATMA GANDHI UNIVERSITY,
P.D.HILLS.P.O, KOTTAYAM.

BY ADV. SRI.V.A.MUHAMMED, SC, M.G.UNIVERSITY

THIS WRIT PETITION HAVING BEEN FINALLY HEARD ON 7.8.2006 ALONG WITH WPC 16862/2006, THE COURT ON 20.12.2006 DELIVERED THE FOLLOWING:

APPENDIX IN WPC 8855/06

EXT.P1-TRUE COPY OF NOTIFICATION DATED 24.12.2005 ISSUED BY M.G. UNIVERSITY

EXT.P2-TRUE COPY OF COMMUNICATION DATED 1.3.2006 ISSUED BY R1

EXT.P3-TRUE COPY OF TELEGRAM RECEIVED BY THE PETITIONER

EXT.P4-TRUE COPY OF ORDER dated 2.2.2006 ISSUED BY THE GOVERNMENT

EXT.P5-TRUE COPY OF NOTE TO THE REGISTRAR DATED 8.3.2006 SENT BY R2

EXT.P6-TRUE COPY OF REPRESENTATION DATED 18.3.2006 SENT BY THE PETITIONER TO THE FIRST RESPONDENT.

// TRUE COPY //

A. K. Basheer, J.

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W.P.(C)Nos.8855 & 16862 Of 2006

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Dated this the 20th day of December, 2006.

JUDGMENT

The post of Reader in Microbiology in School of Bio-Sciences under the Mahatma Gandhi University is the bone of contention in these two writ petitions.

2. While the petitioner in Writ Petition No.8855/2006 contends that the University is bound to proceed with the selection process ignoring the subsequent order issued by the Government regarding communal reservation (Ext.P4), the petitioner in writ petition No.16862/2006 prays for a declaration that appointment to the above post has to be confined among the candidates belonging to Ezhava community, since it was reserved for the said community in terms of Ext.P4 notification mentioned above.

3. The parties and the documents as they appear in Writ Petition No.16862/2006 shall be referred to hereafter unless otherwise indicated.

4. On December 19, 2005 the University issued Ext.P1 notification inviting applications from eligible candidates for appointment to the post of Reader in Microbiology in the School of Bio-Sciences. It was clearly indicated in Ext.P1 that the post was reserved for an Ezhava candidate. On scrutiny of the applications, it was noticed that no eligible Ezhava candidate was available among the applicants. The Scrutiny Committee therefore recommended that the eligible candidates from other communities be invited for interview. Accordingly, the

eligible applicants were called for interview on March 16, 2006. In the meanwhile, Government had issued Ext.P4 notification incorporating certain amendments to Rules 14 and 15 of the Kerala State and Subordinate Service Rules, 1958 (for short 'the Rules'). Ext.P4 notification which was published in the Gazette on March 8, 2006 nevertheless stipulated that the amendments shall be deemed to have come into force on February 2, 2006. Since the University felt that further clarifications had to be obtained in the matter in the light of the amendments, the interview scheduled to be held on March 16, 2006 was postponed. Later, the Syndicate of the University in its meeting held on June 7, 2006 took a decision to conduct the interview for the post of Reader on July 3, 2006. A copy of the resolution passed by the Syndicate is on record as Ext.P3. It was at that stage that the petitioner had preferred writ petition No.17862/2006 praying for issuance of a writ of certiorari to quash Ext.P3 and also for a declaration that the selection and appointment to the post of Reader in Microbiology is liable to be reserved only for Ezhava community as stipulated in the amended Rules in Ext.P4.

5. Respondent No.3 in the above writ petition (petitioner in writ petition No.8855/2006) does not admittedly belong to Ezhava community. But according to her, the amendment of the Rules will have no application as far as the present selection process is concerned, particularly at the instance of the petitioner since he does not possess the requisite academic qualifications to hold the post of Reader. It is contended by respondent No.3 that Ext.P1 notification having been issued

long prior to the amendment and the selection process having commenced even before the amendments, it will be highly illegal and improper to stall the selection process and re-notify the post for fresh selection.

6. It is beyond controversy that the post of Reader in Microbiology is reserved for an Ezhava candidate. Rule 15(a) after the amendment postulates that "notwithstanding anything contained in any other provisions of these rules or in the special rules if a suitable candidate is not available for selection from any particular community or group of communities specified in the Annexure, such vacancy shall be kept unfilled, notified separately for that community or group of communities for that selection year, and shall be filled by direct recruitment exclusively from among that community or group of communities." (emphasis supplied). It is contended by the petitioner that the University cannot proceed further with the selection process if an eligible member of Ezhava community is not available in the zone of consideration. The vacancy has to be kept unfilled and it has to be re-notified separately as unfilled vacancy for that community. The vacancy should be filled by direct recruitment from that community only. After the amendment of the rules, the vacancies set apart for a particular community cannot be allowed to be filled up from among the candidates belonging to other communities.

7. Per contra, it is contended by respondent No.3 that the University is justified in continuing with the selection process which had commenced prior to the amendment of the Rules.

8. It is pertinent to note that the Gazette notification amending the Rules was published only on March 8, 2006 though the Rules were deemed to have come into force with effect from February 2, 2006. Ext.P1 notification was issued in December 2005. The last date for receipt of applications was January 24, 2006. Therefore, the selection process had well and truly commenced even before the amendments had been brought into force.

9. In this context, it is pertinent to refer to clause © under general instructions in Ext.P1 notification which reads thus:

> "c) **Other conditions:** The appointments against the above vacancies will be made as per UGC norms and reservation principles according to Mahatma Gandhi University Statutes 1997 and Kerala State Government Rules. Open competition candidates and reserved community candidates may also apply for the posts reserved for a particular community except those reserved for SC/ST, but they will be considered for appointment only in the absence of candidates belonging to the particular community for which a post is reserved."
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> (emphasis supplied)

The above clause enables the "open competition candidates" to apply for the post reserved for a particular community; but the only condition is that they would be considered for appointment only if candidates belonging to the particular community for which the post is reserved, is unavailable. It is trite that the conditions contained in a notification by publication of which the selection process

has commenced, shall be adhered to and scrupulously followed for the selection process. No subsequent amendment or modification/variation in the conditions of appointment should be applied for the selection. In **Secretary, A.P. Public Service Commission v. B. Swapna and others** (2005 (4) SCC 154) their Lordships of the Supreme Court have held thus:

> "Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because certain criterion, eg.. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment, if amended during continuance of the process of selection, do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect."

10. There is yet another aspect of the matter which persuades me to repel the contentions raised by the petitioner against the continuance of the selection process. It has been asserted by the University and respondent No.3 that petitioner does not possess the requisite qualification to hold the post of Reader in the subject concerned. It is specifically averred by respondent No.3 that only a person who holds Ph.D.. is eligible to be appointed to the post of Reader. Petitioner does not have a case that he is a Ph.D.. holder. As rightly pointed out by the learned

counsel for respondent No.3, petitioner has taken great care not to disclose his qualifications in the writ petition. It is true that he had stated that he had applied for the post. He has not even stated that he possesses the requisite qualification anywhere in the writ petition. Significantly, petitioner has also not filed a reply affidavit controverting the assertions made by respondent No.3 and the University that the petitioner is not qualified to hold the post. Petitioner has also not produced any documents to show his qualifications. On the contrary, respondent No.3 has stated that she is a post graduate in Microbiology with First Class and First rank from the University of Agriculture, Dharwad, Karnataka. She was awarded Ph.D.. in Microbiology by the Indian Agricultural Research Institute, New Delhi in 1997. She had published five Research Papers in various journals and had submitted a project to the Kerala State Council for Science, Technology and Environment of the Government of Kerala known as Bio-remediation of Synthetic Detergents. Respondent No.3 has been working as Lecturer in Microbiology in Mahatma Gandhi University since December 2003, before which she was working as Lecturer in Microbiology in Government Engineering College, Thiruvananthapuram from August 2000.

11. In the counter affidavit, the Registrar of the University has also averred that petitioner does not have the basic qualification to hold the post of Reader and NET along with teaching experience of five years. It has been further asserted that petitioner was found to be ineligible to be considered for the post since he did not possess doctoral degree in the subject concerned. Reference has been made to the

above aspects with regard to the qualification of the petitioner and respondent No.3 only to state that the contention raised by respondent No.3 that the petitioner has no bonafides in challenging the selection process is well founded. No other candidate has challenged the process of selection. It is true that the post in question was reserved for Ezhava community. But Ext.P1 notification unambiguously shows that an open merit candidate can also apply for the post reserved for a particular community. But his candidature would be considered only if candidates belonging to the "particular community" are not available. Since the amendment to the Rules had come into force after the commencement of the selection process, the conditions stipulated in Ext.P1 notification have to prevail. Selection process has to be completed in terms of the conditions stipulated in the said notification. In that view of the matter, the contentions raised by the petitioner are liable to be repelled. I do so.

Therefore, writ petition No.16862/2006 is dismissed. Writ Petition No.8855/2006 is disposed of with a direction to the University to complete the process of selection for appointment to the post of Reader in Microbiology in terms of Ext.P1 notification. The process shall be completed after inviting the eligible candidates for the interview, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

(A.K. Basheer)
Judge.

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